

**United States Government  
National Labor Relations Board  
Division of Judges  
1015 Half Street, SE  
Suite 6034  
Washington, DC 20003-3654**

Re: Strong Steel of Alabama; 15-CA-189655

Dear Honorable Judge Ringer:

Please accept this letter as Respondent Strong Steel of Alabama's ("Strong Steel") post-hearing brief with respect to the above referenced charge filed by Tony McGinty ("McGinty") and Eric Bracewell ("Bracewell"). As represented by the testimony heard on March 27, 2018 and discussed below, the complainants' allegations are false and without any merit. The complainants did not engage in any protected concerted activity, and their employment was terminated solely because they violated Strong Steel's conduct policy by disturbing production, compromising safety, failing to meet the work skill level required and engaging in alleged theft.

**1. The Opening Statement from General Counsel ("GC") was Totally Fabricated and Based on Information Obtained from a Hostile Witness that Failed to Show for the Hearing**

First, the opening statement from the GC was totally fabricated and was taken from a hostile witness that failed to show for the hearing. It was the responsibility of the GC to have his witness present. It's obvious that Mr. Hall did not want to perjure himself in court. The GC was in close contact with Mr. Hall and knew his whereabouts leading up to the hearing. Moreover, Mr. Brooks' affidavit contradicts all of Mr. Hall's statements. If they are both thrown out, all we have are the witnesses who attended the hearing—none of which, through personal knowledge, substantiated Complainants' charges. Moreover, I was portrayed by the GC to be a vulgar tyrant, which was disproved by all of the witness testimony.

The witness testimony at the hearing was comprised entirely of hearsay elicited only when coached by the GC. There were never any direct statements of any kind that these witnesses were privy to that substantiated the complainants' claims that they were terminated for discussion of wages. None of the witnesses provided personal knowledge of direct statements in their testimony that any management, including myself, fired McGinty and Bracewell for discussing wages. McGinty did not remember anything about his termination. Bracewell remembered the clause in the handbook about disrupting work but did not quote any supervisors indicating that his dismissal was for discussing wages. All discussions with the Complainants regarding their reasons for termination were held privately in Strong Steel's offices to protect their confidentiality and prevent disruption of the factory. Any knowledge of discussion in the factory would be pure gossip and hearsay.

Mr. Ellison and Mr. Moody both heard the outbreaks in the factory and approached me for a raise and they were given one without any negative discussions or retaliation for discussing their wages. Most of the employees' wages were determined by Mr. Hall or Mr. Brooks. They approached me when they thought a raise was warranted and I usually agreed after inspections or consulting with their supervisors.

Notably, there was absolutely no testimony from any individual with direct knowledge of the events in question that the complainants' termination was the result of engaging in concerted protected activity.

## **2. Strong Steel Has No Rule or Practice Prohibiting or Hindering Employees from Discussing Wages**

Second, Strong Steel has absolutely no work rule or practice that prohibits employees or hinders employees from discussing their wages in the workplace, and any allegation suggesting otherwise is patently false and unsubstantiated. Strong Steel has an employee handbook that contains various employment policies and work rules, including an employee conduct policy that provides, in pertinent part: "Employees shall not conduct themselves in a manner that causes a distraction or a decrease in work production on the shop floor during working hours." Both McGinty and Bracewell were provided with a copy of this handbook when they were hired.

The GC made reference several times that Strong Steel's General Rules had dialogue or clauses referring to discussion of pay. There is no mention of this in our general rules. He even coached a witness to indicate this. There was never any mention to any employees that discussing wages amongst themselves or with Strong Steel was prohibited.

## **3. Complainants' Termination Was Unrelated to Any Concerted Protected Activity**

Furthermore, the testimony and evidence presented at hearing demonstrates that Complainants' termination was unrelated to engaging in concerted protected activity and wholly related to poor work performance, violating company policy and fostering a disruptive environment that compromised the safety of others. Both Complainants admitted to taunting and mocking other employees in a joking fashion during work hours on several occasions. Bracewell admitted that McGinty had approached him at least three times during working hours to have discussions about unrelated work duties as well as approached other employees. Working with steel, cranes and cutting equipment can be very dangerous especially with distractions, even life threatening. During work hours the safety of our employees is paramount, and this taunting behavior hinders other employees from being able to safely and effectively perform their jobs.

Bracewell was an employee for only two weeks and was hired on the representation that he had skills above the average laborer. This was not the case. It quickly became apparent after Bracewell's hire that he was not a skilled worker and could only work as a helper.

McGinty was in charge of the dumpster and filling it with trash from clean ups. When we noticed his presence continually around the dumpster we checked and found our new boxed tools inside, strongly suggesting that McGinty had intended to steal the tools. Mr. McGinty testified that he remembered virtually nothing, especially my conversation as to why he was released. He also had no recollection of any discussion with the supervisors. He still does not know why he was terminated. Originally I was going to press charges against McGinty but after his testimony and non objection to my statement of a potential mental condition that may have precluded him from recalling any information, I felt bringing additional stress to his life was unwarranted. I'm not sure why he put all our new boxed tools in the dumpster but now knowing his condition, anything is possible. The fact that the tools were in his bucket was acknowledged in John Brooks' affidavit. In John Brooks and Brian Halls' affidavits in January 2017, both mentioned theft and acknowledged discussion of possible theft. The GC indicated he was not

aware of any accusations but his affidavits from witnesses contradicts this just by asking the question. In fact none of the GC's affidavits corresponded with the testimony of the witnesses that appeared, belying their credibility.

Mr. Hall's affidavit was pure perjury. His affidavit was taken well after his volatile dismissal. Every witness contradicted his description of Mr. Attalla's demeanor.

Since the hearing, Mr. John Brooks contacted me to let me know that his subpoena was not delivered but he knew Mr. Hall received his. Mr. Hall's absence was deliberate for fear of perjury anticipating Mr. Brooks' presence. It was never explained to any of the general employees why Mr. McGinty and Mr. Bracewell were terminated. It was pure conjecture on their own and gossip amongst themselves.

An affidavit was also taken from Anthony Attalla but GC did not turn it in. It was clearly stated in that affidavit the reason for termination was alleged theft. During the process, numerous times I had to correct the agent that she was twisting my statements. In Mr. Moody's affidavit it stated that Anthony Attalla made a direct comment to him that discussing wages was prohibitive. Why was this not asked of him as a witness under oath when he testified? Mr. Moody indicated under oath that he heard the discussion and commotion about pay amount during the supposedly joking taunting. Mr. Moody approached me for a raise and it was granted. Mr. Moody received several more raises after that as well. No witness made any direct statement that Anthony Attalla, John Brooks, or Brian Hall terminated any employee for discussing wages. This was purely coached to Complainants by other individuals.

Thirty days after Mr. McGinty's termination, he came back seeking employment. He made a statement that "I guess you can lose your job if you discuss pay." I clearly and quickly responded absolutely not and that's not why you were terminated. Mr. McGinty has no recollection of any meeting with me or any discussions at all with anyone. Mr. Bracewell believes he screwed up by causing a commotion in the factory and realized his skills were misrepresented in the application process.

In closing, it's clear that no one, including the Complainants, heard direct statements or have any basis to believe that the reason for the termination of the Complainants was due to discussing wages. It's pure conjecture from outside sources. The valid reasons were disturbance of production, safety, work skills and alleged thief.

#### **4. Conclusion**

In summary, there were never any discussions with any employees by any supervisors in the factory about the discussion of wages or any prohibition by Strong Steel of employees' discussion of wages. McGinty and Bracewell were brought in the office and terminated for legitimate reasons unrelated to engaging in any concerted protected activity. Moreover, the supervisors' discussions with Complainants regarding their termination were held privately to protect the privacy of the Complainants and to avoid further disruption of the factory. Therefore, any other employee's statements about the reasons for the Complainants' termination are purely hearsay or conjecture. Mr. Attalla testified as to the reasons for termination and had no other discussions with any other employees about the reasons except the two supervisors, Hall and Brooks.

Under cross examination, Mr. McGinty lost all memory of any of the discussions with his supervisors or Mr. Attalla. How can there be a charge if there is no memory of any conversations or dialogue with Strong Steel about the incidents leading to his termination and discussions related to his termination?

In Mr. Bracewell's testimony, it was implied by the GC who then prompted the witness to say that the reason for his termination was for discussion of wages, but Mr. Bracewell could not remember who said it. Mr. McGinty and Mr. Bracewell made an assumption or a third party made the assumption for them, that their termination was related to discussions of wages—there is absolutely no testimony or evidence that substantiates this assumption.

Accordingly, I respectfully request that Your Honor dismisses the Complainants' charge in its entirety and render a decision in favor of Strong Steel.

Sincerely,

Anthony Attalla

Strong Steel of Alabama